

(2018) 12 RAJ CK 0146
In the Rajasthan High Court
Case No : Criminal Appeal No.870 Of 2012

Jona Alias Joniya And Ors

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 06-12-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 313, 374(2)
Indian Penal Code, 1860 — Section 34, 302, 307, 326, 447
Evidence Act 1872 — Section 27

Citation : (2018) 12 RAJ CK 0146

Hon'ble Judges : Vinit Kumar Mathur, J;Sandeep Mehta,J

Bench : Division Bench

Advocate : Shambhoo Singh, C.S. Ojha

Final Decision : Dismissed

Judgement

The present criminal appeal under Section 374(2) of Cr.P.C. has been preferred by the appellants against the judgment and order of conviction dated 13.09.2012 passed by learned Additional Sessions Judge, Abu Road, District Sirohi in Sessions Case No. 25/2010 whereby the accused-appellants have been convicted and sentenced as under :

Offence

Sentence

447 IPC

03 months' S.I.

326 IPC (accused Jona) / 326/34 IPC (accused Babu)

05 years' R.I. and fine of Rs. 1,000/- each, in default of payment of fine to further undergo 03 months S.I.

302/34

Life imprisonment and fine of Rs. 2,000/- each, in default of payment of fine to further undergo 06 months' S.I.

All the sentences shall run concurrently.

The prosecution story as unfolded in the parcha bayan of Kala (P.W. 3) recorded on 30.05.2010 states that there was dispute over the land between their family and his uncle Babu, which was going on for last two years. For this reason, there was no interaction between them. On 29.05.2010, while his mother along with his wife and children had gone to attend a marriage ceremony, he and his father Kewla were alone in the house. He slept on a cot in the backyard of the house and his father slept in the front portion of the house. At around 11.00 P.M., his uncle Babu and his son Jona alias Joniya armed with axes entered their house with an intention to kill and assaulted him inflicting grievous injuries on his left shoulder. He ran inside the house screaming. Thereafter, both the accused persons ran towards his father who was sleeping on a cot. They caught hold of his father. His father raised a hue and cry whereupon, his brother Rooparam who was sleeping next door came on the spot. In the moonlight, he saw that Babu and Jona alias Joniya dragged his father outside the house and assaulted him with axes. Jona alias Joniya inflicted an axe blow on the right side of the ribcage of his father and Babu inflicted axe blow on the back of right side above the waist, due to which his father fell on the ground. The first informant and Rooparam raised an alarm whereafter, the accused persons left the place. When both of them went close to their father, they saw that he was lying dead on the floor. He also suffered grievous cut injuries on his shoulder by the axe blows. Being in shock of the incident, they waited till the sunrise and thereafter, took their father to Trauma Center, Taleri being accompanied by Rooparam, Jumma and Sarda for treatment.

On this parcha bayan, an F.I.R. No. 129/2010 was registered at Police Station Abu Road Sadar, District Sirohi for the offences under Sections 302 & 307/34 of I.P.C.

After conclusion of investigation, the police filed charge-sheet against the accused appellants for the offences under Sections 447, 326 & 302 read with Section 34 of I.P.C.

Learned trial court framed, read over and explained the charges for the offences under Sections 447, 326 & 302 read with Section 34 of I.P.C. to the accused appellants who denied the charges and sought trial.

During the trial, the prosecution examined as many as 20 witnesses and 35 documents were exhibited and in defence, 03 documents were got exhibited as Ex.D/1 to Ex.D/3.

The accused-appellants were examined under Section 313 of Cr.P.C. and they were confronted with the evidence adduced against them during the course of trial to which they denied and stated that they were innocent and had been

falsely implicated in this case.

Learned trial Court, after hearing the arguments from both the sides, convicted and sentenced the accused-appellants as above vide judgment dated 13.09.2012. Hence this appeal.

We have heard learned counsel for the appellants and the learned Public Prosecutor.

Learned counsel for the appellants vehemently submitted that the police received information of the alleged incident on 30.05.2010 at 5.15 A.M. (Rojnamcha Report - Ex.P/22A) but the F.I.R. was registered on 30.05.2010 at 8.15 A.M. He further submits that a close reading of the Rojnamcha Report (Ex.P/22A) shows that the names of the accused persons are conspicuously missing in the information recorded by the police. Therefore, the possibility of false implication of the accused-appellants after proper application of mind and design cannot be ruled out. The names of the accused-appellants were introduced after due consultation. The false implication cannot be ruled out as there was a long standing land dispute pending between two families for last more than 02 years.

Learned counsel further submits that no reasonable cause has been mentioned for the delay in recording parcha bayan of P.W. 3 - Kala. He further submits that the F.I.R. was forwarded to the concerned Magistrate on the next day i.e. 31.05.2010 and there is no reason for forwarding the F.I.R. after such a delay of 24 hours as the same has been forwarded on 31.05.2010 at 8.00 A.M. Learned counsel for the appellants took us to the statement of Investigation Officer, P.W. 18 - Kishan Singh, and submits that as per the investigation conducted by the Investigation Officer, there were material contradictions in the prosecution story. He further submits that as per the Investigation Officer, the postmortem was conducted at the spot, whereas, P.W. 16 - Dr. Gaurav, who conducted the postmortem upon the body of the deceased, stated that the postmortem was conducted in the hospital.

Learned counsel further submits that in the statement of P.W. 20 - Dashrath Singh, it has come on record that there was a correction in Ex.P/24, which was corrected by putting whitener.

Learned counsel further submits that P.W. 7 - Kapuraram who is the attesting witness of Panchnama of the dead body of deceased Kewlaram stated that he affixed his signatures on the papers prepared by the police and he did not know the contents of the same.

Learned counsel further submits that P.W. 5 - Rooparam in his cross-examination stated that an axe was lying on the spot, which was taken away by the police and therefore, the recovery of two axes in the present case is nothing but a plant recovery at the instance of the appellants.

Learned counsel on the strength of these arguments submits that there are material contradictions, omissions and improvements in the statements of the

prosecution witnesses and the trial court committed grave factual and legal error while convicting the appellants for the alleged offences despite the prosecution miserably failing to prove the allegations leveled against the appellants beyond reasonable doubt.

Per contra, learned Public Prosecutor submits that the injured eye-witnesses, namely, P.W. 3 - Kalaram and P.W. 5 - Rooparam specifically named the accused appellants and stated that after assaulting their father by axes, they ran away from the spot. He further submits that the testimony of these two witnesses i.e. P.W. 3 - Kalaram and P.W. 5 - Rooparam is fully corroborated by the recovery of bloodstained weapons of offence i.e. two axes on the information given by the appellants under Section 27 of the Evidence Act (Ex.P/26 & Ex.P/27). He further submits that the F.S.L. Report (Ex.P/29) shows the blood group "A" of the deceased on both the axes recovered at the instance of the accused-appellants, which completes the chain of circumstances leading to only conclusion that the appellants were the only persons who inflicted the fatal injuries resulting into death of the deceased Kewlaram and therefore, in these circumstances, learned trial court was absolutely right in passing the judgment dated 13.09.2012 convicting and sentencing the accused-appellants for the alleged offences.

We have considered the submissions made at the bar and closely scanned the record of the learned trial court.

P.W. 3 - Kalaram who is son of the deceased stated that while he and his father were at home, the accused-appellants came to their house armed with sharp edged weapons i.e. axes in their hands and after assaulting him, they ran towards his father and after dragging him outside the house, belabored him all over the body by the axes. When he screamed, his brother Rooparam (P.W. 5) who lives next door reached the spot. Both the accused persons inflicted injuries on the back and ribs of his father. When he and his brother Rooparam raised an alarm, the accused persons left the place of incident. Because he was frightened of the incident, he kept sitting with his brother whole night. After the sunrise, he was taken to the hospital by Rooparam, Sarda and Jumma. In the cross-examination of this witness, nothing contrary to his statement made in the examination-in-chief was elicited.

P.W. 5 - Rooparam who is brother of the injured Kalaram (P.W. 3) and son of the deceased Kewlaram, also stated almost on the same lines as P.W. 3 - Kalaram. He stated that there was dispute over the land between his family and the appellants and therefore, the relationship between the two families was strained. On hearing hue and cry of his brother, he went to his house where he saw that Babu and Jona alias Joniya had dragged his father out of the house and inflicted axe blows one after another in the rib cage and on the back and while he and his brother were screaming, the accused persons fled away from the spot.

P.W. 16 - Dr. Gaurav stated in his statement that while working as Medical Officer in the Government Hospital, Abu Road, he conducted the autopsy upon dead

body of Kewlaram. He further stated that the cause of death was excessive bleeding due to the injuries suffered by the deceased Kewlaram.

P.W. 18 - Kishan Singh is the investigation Officer who conducted the investigation of the matter and stated that he prepared the site plan, recorded the statements of the witnesses, collected the samples and after conducting the investigation, as prescribed in law, submitted his report before the court of competent jurisdiction.

Ex.P/19 is the injury report of Kaluram (P.W. 3 - Kalaram). Ex.P/21 is the postmortem report of the deceased Kewlaram wherein the cause of death was shown as shock because of massive bleeding. Ex.P/29 is the F.S.L. Report.

The testimony of P.W. 3 - Kalaram who is son of the deceased Kewlaram clearly unfolds the fact that the appellants armed with axes assaulted him and inflicted injuries to his father Kewlaram because of their enmity as the land dispute was going on between them for last more than 2 years. There is no reason for us to disbelieve the statement of P.W. 3 - Kalaram because he himself is an injured witness. His injury report is placed on record as Ex.P/19. Besides, the presence of this witness on the place of incident is quite natural as he too was staying in the house along with his father.

Similarly, P.W. 5 - Rooparam is the brother of Kalaram (P.W. 3) and son of the deceased Kewlaram, who was living next door. It is quite natural that at night in the place like the place of incident i.e. village if somebody cries and screams, the voice travels much faster and is clearly audible. As happened in this case, on hearing the cries of his brother, P.W. 5 - Rooparam ran towards the house of Kalaram (P.W. 3) where he saw that his father was being assaulted by the accused persons. The ocular evidence of these two witnesses (P.W. 3 - Kalaram & P.W. 5 - Rooparam) is getting fully corroborated by the recovery of bloodstained weapons of offence i.e. axes on the information given by the accused-appellants under Section 27 of the Evidence Act (Ex.P/26 & Ex.P/27). The presence of blood group "A" as reported in the F.S.L. Report (Ex.P/29) fortifies the fact of two axes having been used for assaulting the deceased Kewlaram as the blood group of Kelwaram matched with the blood group present on two axes. Therefore, in these circumstances, when the ocular evidence which in our opinion is clinching, reliable and worthy of credence gets corroboration by the medical evidence and the recovery of weapon of offence completes the chain pointing towards the guilt of the accused- appellants.

We also note that as per the postmortem report (Ex.P/21), the following injuries were found on the person of the deceased, which are reproduced as under :-

"1. Cutting injury show in figure as mentioned No. 1 and 2 size as mentioned (cutting injury with sharp object size 10x4x5 cm and 8x4x5 cm, respectively) (posterior aspect)

2. Injury No. 1 is 5 cm deep which cuts posterior lobe at liver and Ribs 8, 9, 10.

3. Injury No. 2 is also 5 cm. deep which cuts muscle deep and peritoneum.

4. Abrasion of size 3x2 cm. at forehead"

The place and the dimensions of the above injuries found on the body of the deceased Kewlaram are fully corroborated from the statement of P.W. 3 - Kalaram and P.W. 5 Rooparam.

We are not impressed by the fact that in the Rojnamcha Report (Ex.P/22A), though, recorded at 5.15 A.M., the names of the accused-appellants were not there but in the Parcha Bayan (Ex.D/1), the same finds mention of two accused-appellants for the simple reason that in the Rojnamcha, only a fact of incident having happened was recorded but in the Parcha Bayan, the entire story of the incident occurred on that night was divulged by Kalaram (P.W. 3). Therefore, merely absence of the names of the appellants in the Rojnamcha Report (Ex.P/22A) will not give credence to the theory that the appellants have been falsely roped in after due consultation.

The argument of the learned counsel for the appellants that P.W. 5 - Rooparam in his cross-examination stated that only one axe was recovered from the spot which was taken away by the police does not help the accused-appellants in any manner as the presence of axe in the house that too in the village is not unnatural and is of no significance as two axes which were recovered at the instance of the accused persons were bloodstained which matched the blood group of the deceased Kewlaram which is relevant in the present case.

The argument of the learned counsel for the appellants that there was delay in forwarding the F.I.R. to the learned Magistrate after a period of 24 hours is also worth rejection for the simple reason that on 30.05.2010, the courts were observing morning hours (7.00 A.M. to 1.00 P.M.) in the State of Rajasthan and on the very next day 31.05.2010 at 8.00 A.M., the F.I.R. was presented before the Magistrate concerned. Therefore, in our opinion, firstly there was no delay in forwarding the F.I.R. to the concerned Magistrate and secondly, merely because it was not presented on 30.05.2010, it does not vitiate the entire prosecution story.

The Hon'ble Supreme Court in the case of Anjan Dasgupta Vs. State of West Bengal and others reported in 2017 Cri.L.J. 529 (S.C.) has held in Para 20 & 21 as under :-

"20. The I.O. after receipt of the information of an offence by R.T. message had arrived at the scene on 17.40 hours, which clearly proves the prompt commencement of the investigation. FIR was dispatched on 22nd June, 2000 which has also been accepted by trial court. When no questions were put to I.O. in his cross-examination regarding the delay in dispatch, at the time of hearing, the accused cannot make capital of the said delay in forwarding the FIR. This Court in Rabindra Mahto and Another v. State of Jharkhand 2006 (10) SCC 432 has held that in every case from the mere delay in sending the FIR to the

Magistrate, the Court would not conclude that the FIR has been recorded much later in time than shown. It is only extraordinary and unexplained delay, which may raise doubts regarding the authenticity of the FIR.

21. The present is the case, where recording of the FIR on 16th June, 2000 itself has been proved, accepted by the trial court also, thus mere dispatch of the FIR on 22nd June, 2000 from the police station to the Magistrates' Court has no bearing on the basis of which any adverse presumption can be drawn. From the above discussion, we are of the clear view that the FIR was genuine FIR and trial court committed an error in drawing adverse inference against the prosecution and refusing to attach value to the FIR."

As far as the contention with respect to the minor discrepancies, diversions and improvements in the statements of the witnesses are concerned, the same cannot wash away or vitiate the entire testimony deposed by the prosecution witnesses especially P.W. 3 and P.W. 5, who are eye-witnesses and their testimony is getting corroborated by the medical evidence, postmortem report and the F.S.L. Report making the chain complete to show that the appellants were the only persons involved in the commission of the alleged offences and nobody else.

Therefore, in view of whatever stated above, we are of the considered opinion that the judgment dated 13.09.2012 convicting the accused-appellants under Sections 447, 326, 326/34 and 302/34 I.P.C. deserves to be upheld.

Resultantly, the criminal appeal fails and the same is dismissed. The judgment and order dated 13.09.2012 passed by the learned trial court is upheld.